

**Before the
DEPARTMENT OF COMMERCE**

Global Free Flow of Information on the)	Docket No. 100921457-0457-01
Internet)	
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COMMENTS OF VERIZON AND VERIZON WIRELESS

Of Counsel:
Michael E. Glover

Edward Shakin
William H. Johnson
Christopher D. Oatway
VERIZON
1320 North Court House Road, 9th Floor
Arlington, Virginia 22201
(703) 351-3060

John T. Scott, III
William D. Wallace
VERIZON WIRELESS
1300 I Street N.W., Suite 400 West
Washington, DC 20005

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TABLE OF CONTENTS

	PAGE
INTRODUCTION	1
I. REMOVING GOVERNMENT RESTRICTIONS WILL PROMOTE A ROBUST INTERNET ECOSYSTEM THAT PROVIDES THE PRODUCTS AND SERVICES CONSUMERS DEMAND.	2
A. Applying Burdensome Telephone Regulation to VoIP and Other IP-Based Services Harms Consumers.....	4
B. A Unified and Balanced Approach to Privacy Rights and Data Protection Will Help Cloud-Based Services and Other Innovations Thrive.....	6
C. Restrictions On Foreign Direct Investment Should Be Eliminated.....	7
II. MANAGING THE COMPLEX ISSUES CREATED BY CONTENT RESTRICTIONS WILL BENEFIT INTERNET USERS EVERYWHERE.	9
A. The U.S. Digital Millennium Copyright Act and Section 230 of the Communications Decency Act Are Appropriate Models for Balancing the Interests of Various Stakeholders.	11
B. National Policies Should Account for the Fact that Blocking Has Technical Limitations and Can Create Unintended Problems.....	13
III. EXCESSIVE REGULATION CAN HAVE ADVERSE CONSEQUENCES.....	14
A. Promoting Industry Self-Governance Is Important Given the Complex and Fast-Changing Nature of the Internet.....	14
B. Domestic Policies that Regulate the Internet Would Have Significant Negative International Ramifications.	17
CONCLUSION.....	21

INTRODUCTION

In order to promote continued growth and development of the Internet unfettered by artificial governmental restraints, the U.S. government's international advocacy should continue to promote a single, global, interoperable Internet that is free of government restrictions that interfere with the ability of informed consumers to drive continued development of services and content that meets their needs. Likewise, here at home, the government should continue to pursue its hands-off policy toward the Internet rather than saddle the Internet with a host of restrictions that would inhibit development and limit the range of options available to consumers.

As a major provider of global Internet protocol (IP) services covering 159 countries, Verizon¹ is dedicated to working with governmental authorities and other stakeholders to promote the continued global expansion of the Internet and the free flow of information on it. Global IP services providers are required to comply with myriad different policies and national operating requirements affecting the international flow of information on the Internet and the deployment of innovative service offerings. Such complex country-specific requirements threaten to fragment the global Internet and can slow – and even prevent – the international deployment of important IP services. Accordingly, U.S. government advocacy should encourage eliminating restrictive government policies, and avoiding new ones, in order to promote investment in the Internet and facilitate deployment of innovative technologies, including voice over Internet protocol (VoIP) and cloud-based services as well as open source development and other innovations not yet envisioned. In turn, a strong and robust Internet will continue to make important contributions to “prosperity, education, and political and cultural

¹ “Verizon” refers to Verizon Wireless and to the regulated, wholly owned subsidiaries of Verizon Communications Inc.

life.”² The robustness, transparency, and resiliency of the Internet will also be increased by continued encouragement of private sector self-governance, including development of appropriate industry standards and sound practices, rather than prescriptive government regulation.

Of course, with any global policy initiative, the credibility of the United States and its ability to successfully negotiate international agreements must rest on pursuing policies at home that are models for – and consistent with what the United States asks of – other governments. The U.S. government’s historical approach to foregoing Internet regulation has resulted in tremendous growth and innovation, and supports the credibility necessary for a global policy aimed at minimizing governmental restrictions. For example, the U.S. government has been open to foreign investment in the Internet, and it has declined to saddle the Internet with the legacy regulatory paradigms of the 20th Century copper telephone industry. The U.S. government should not reverse course by applying burdensome regulation to the Internet, as some state and federal regulators are currently proposing. Doing so would both harm American consumers and set a bad precedent that would undermine the successes of the Internet and undercut America’s international advocacy.

DISCUSSION

I. REMOVING GOVERNMENT RESTRICTIONS WILL PROMOTE A ROBUST INTERNET ECOSYSTEM THAT PROVIDES THE PRODUCTS AND SERVICES CONSUMERS DEMAND.

To respond to the demands of individual and enterprise customers in the U.S. and abroad, Verizon has invested tens of billions of dollars deploying cutting-edge Internet technologies. Among Verizon’s millions of customers are 98% of the Fortune 1000 businesses,

² *Global Free Flow of Information on the Internet*, Notice of Inquiry, 75 FR 60068 (2010) (“*Notice*”).

as well as thousands of government agencies and educational institutions spread across six continents. Many of those customers have operations in multiple countries and demand a uniform set of integrated services from a single provider. Verizon seeks to be responsive to those demands, including by offering a host of VoIP services, network-based security services and cloud-based products to its diverse customer base. For example, Verizon recently announced it is expanding its global data centers in order to accommodate increased customer demand for public, private, and hybrid cloud computing services.³ That investment is part of the \$17 billion that Verizon plans to spend this year building, operating and integrating its advanced, reliable and high-performance networking and computing platforms.⁴

However, the existing patchwork of governmental restrictions in countries around the globe can undermine or prevent the delivery of IP services, and hold back innovation and investment to the detriment of current and future users in the U.S. and abroad. This is not news to the Department, which should be commended for its excellent work and continued engagement in national, regional and international dialogues on Internet policy and regulatory issues in order to promote market liberalization.⁵

³ See Press Release, “Verizon Business Furthers Cloud Strategy Through Global Data Center Expansion,” <http://www.verizonbusiness.com/about/news/pr-25610-en-Verizon+Business+Furthers+Cloud+Strategy+Through+Global+Data+Center+Expansion+.xml> (Sep. 30, 2010).

⁴ See *id.*

⁵ For instance, the International Trade Administration mission as an advocate for trade in services has led, in addition to trade facilitation on behalf of other industries, to key negotiation and facilitating roles, such as in the creation and maintenance of the EU-U.S. Safe Harbor program for data protection compliance. Further, the National Telecommunications and Information Administration's advisory role to U.S. delegations within inter-governmental organizations such as the International Telecommunications Union, Internet Governance Forum, and Organization for Economic Cooperation and Development, among others, continues much needed debate and negotiation toward common goals and governance approaches of the type discussed here. Both organizational missions within the Department have most recently manifested themselves in the consultations undertaken not only with this Notice, but also in prior efforts on privacy, cybersecurity, and in a forthcoming effort on intellectual property.

The Task Force is appropriately exploring how trade or other intergovernmental agreements might “promote the free flow of information over the Internet.”⁶ The best way to promote that goal is to eliminate governmental restrictions on the ability of consumers to determine for themselves what services they want to receive and to drive the continuing development of the Internet and other IP services. That means removing government restrictions that inhibit investment and the operation of the market, including by ensuring that outdated, legacy regulatory regimes developed for the telephone industry are not applied to IP services.

A. Applying Burdensome Telephone Regulation to VoIP and Other IP-Based Services Harms Consumers.

When excessive regulation is applied to IP-based services, it can deter cross-border service deployment and future innovation and investment. One such service, VoIP, permits the integration of innovative applications and service features into a voice service using IP technology in a manner not possible only several years ago, creating exciting possibilities for both businesses and consumers to communicate in new ways not seen before. In many countries Internet telephony qualifies for streamlined regulation on grounds that it is an “enhanced,” “value added,” or information service (consistent with domestic U.S. regulatory treatment of the Internet generally). However, according to the most recent VoIP regulation survey by the International Telecommunications Union (ITU), sixty countries currently ban retail VoIP services.⁷

⁶ Notice at 60073 (Question No. 5).

⁷ ITU, *GSR Discussion Paper: Voice over the Internet Protocol – Enemy or Ally?*, http://www.itu.int/ITU-D/treg/Events/Seminars/GSR/GSR09/doc/GSR09_VoIP-Trends_Biggs.pdf, at 3 (Nov. 2009). Another thirty-nine countries effectively have no framework that covers VoIP one way or another. *Id.*

Any restrictions can greatly impede deployment of international, cross-border services. This is particularly true in the enterprise services marketplace, where innovative services such as VoIP may be a key component of service offerings to multinational customers. Indeed, complex licensing and other requirements in some countries – which are nonexistent in other jurisdictions – can mean the difference between timely deployment and non-deployment of the service. Accordingly, the U.S. government should promote policies that do not restrict emerging IP-based technologies such as VoIP.

With specific regard to national regulation of VoIP services, the public policy framework should be as conducive as possible to the actual offering of this and other cross-border data services. For example:

- Barriers should not be imposed through burdensome authorization requirements. Although a VoIP provider may be required to register in order to do business, as any other business may be required to do, VoIP services should not be limited by legacy regulations that act as barriers to entry, including requirements to obtain certificates or licenses prior to offering service, and imposing rate or other archaic monopoly era telephone regulations on these new competitive services.
- The scope of permissible services should be broad, including VoIP services that are and are not interconnected to the telecommunications network, and all entities offering such services should have the same flexibility regardless of how they are classified for regulatory purposes.
- A practical regulatory approach to public welfare obligations for VoIP should be limited to *bona fide* public interests (e.g., mandating emergency calling, facilitating access to national non-emergency “hotline” numbers), should focus on whether the product is a substitute for the basic voice product in the market, and should recognize that technical limitations may prevent location-based identification of VoIP users.
- Consumer protection rules and obligations should not apply to cross-border services rendered by operators with a focus on business customers, especially when services are confined to private networks with no connectivity to public switched voice networks.

The same set of principles should apply to the regulation of other IP innovations.

Whether in the context of trade agreement negotiation, or other bilateral meetings where regulations are discussed, the focus of U.S. engagement on these issues should be to promote

self-governance initiatives, limit unnecessary regulation, and assimilate best-in-class guidance on criteria for determining when limited regulations should be applied to a new service or existing service innovation in a national market. Notably, the U.S. Trade Representative has made clear the importance of working cooperatively with other countries to facilitate cross-border transfers of information, and of being vigilant with respect to identifying and removing non-tariff trade barriers that impede cross-border services and data flows.⁸

B. A Unified and Balanced Approach to Privacy Rights and Data Protection Will Help Cloud-Based Services and Other Innovations Thrive.

As Verizon noted in response to the Task Force’s Notice of Inquiry regarding “Information Privacy and Innovation in the Internet Economy,” existing international privacy laws are generally predicated on jurisdictional bases (e.g., location of data or where data collection occurs) that make little sense in today’s business environment.⁹ The result can be substantial complications in business rules and uncertainty when deploying IP-based services and technologies that collect and store data in new or innovative ways. Cloud-based services and other “remote access” technologies are good examples since they can and often will be provided in a “virtual” space that does not necessarily reflect national borders. In particular, data protection laws should take account of these new types of services, which are in increasing demand from customers seeking to cut costs. Accordingly, as Verizon set forth in its previous comments, the U.S. government should promote a unified approach to privacy that alleviates

⁸ For example, in remarks last month before the Transatlantic Economic Council, the Deputy Assistant USTR for Europe stressed the importance of working cooperatively with the EU to the end of ensuring that third countries do not prevent cross-border transfer of information or require service providers to establish a physical presence in order to provide services locally. *See* Remarks of Deputy Assistant USTR for Europe David Weiner, Transatlantic Economic Council Outreach Session, U.S. Department of Commerce (Oct. 26, 2010) (emphasizing the potential of diverse national non-tariff restrictions to impact cross-border service provision and data flows).

⁹ *See* Comments of Verizon and Verizon Wireless, *Information Privacy and Innovation in the Internet Economy*, Docket No. 100402174-0175-01, RIN 0660-XA12, at 3-5 (June 14, 2010).

jurisdiction-oriented impediments to data transfers and that also recognizes and incorporates the flexibility of self-regulatory programs.

The European Commission (EC) is in the process of updating its Data Protection Framework Directive, which has not been modified since 1995.¹⁰ This is an important undertaking that should be monitored closely because it has significant implications for trans-Atlantic trade, investment, and cultural exchange. The EC has correctly stated that “Data Protection Authorities should strengthen their cooperation and better coordinate their activities, especially when confronted by issues which, by their nature, have a cross-border dimension.”¹¹ The U.S. government should work cooperatively with the EC to help with development of data protection policies that are consistent with the unified privacy approach described above.

C. Restrictions On Foreign Direct Investment Should Be Eliminated.

Telecommunications is a capital intensive industry, and access to capital is important to ensuring the deployment and expansion of a robust network. Countries that have eliminated barriers to foreign direct investment (FDI) have benefited from greater commitment and longer-term engagement by foreign investors as well as new management approaches, technology, and skills. Indeed, FDI has been the driver of telecommunications sector growth in liberalizing

¹⁰ The Electronic Communications Data Protection Directive, (2002/58/EC, OJ L 201, 31.07.2002) <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32002L0058:EN:NOT>), a progeny of the 1995 Directive applying its principles in the context of online services, was recently revised in the context of the European Electronic Communications Regulatory Framework review. The revisions to the 2002 Directive, addressing needed changes to such areas as opt-in/out and security breach notification, underscore the degree to which rapid changes in online services necessitate revisiting the EU privacy fundamentals in the 1995 Directive.

¹¹ European Commission, COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS: “A Comprehensive strategy on data protection in the European Union,” <http://www.statewatch.org/news/2010/oct/eu-com-draft-communication-data-protection.pdf>, at 16 (2010).

economies.¹² Companies investing in telecommunications bring with them new technologies and business processes and methods. But by far the greatest rewards to countries that have opened up their telecommunications sectors to investment are the indirect revenues, i.e., the benefits that are spread throughout the economy and society as a whole as more and better communications services benefit everyone.¹³

Over the past two decades, most countries have taken significant steps to allow FDI in their telecommunications sectors. Between 1990 and 2003, 122 of 154 developing countries financed telecommunications projects with foreign investment.¹⁴ However, many still limit foreign ownership to less than 100%.¹⁵ Of course, capital goes where it is welcome, and stays where it can grow. Many investors have either limited their investments in or kept away from countries that have placed restrictive caps on the level of FDI in the telecommunication sector. Given that FDI restrictions continue to harm consumers and retard the global expansion of the Internet, the U.S. government should continue to support their elimination.

¹² For instance, between 1990 and 2001, the telecom sector drew more investment in developing countries than any other sector, totaling \$331 billion. Half of this investment went to the Latin America and the Caribbean regions. Notably, Sub-Saharan Africa, which had no private telecom investment at all in 1993, accounted for 5% of the global total in the sector by 2001. The ability to attract private investment in telecoms is not confined to any one part of the globe. When investment figures are adjusted to reflect investment per head of population, countries and regions as diverse as Panama and Estonia are included among the top five countries worldwide. See *ICC Telecom Liberalization Toolkit*, <http://www.iccwbo.org/uploadedFiles/TELECOMS%20LIBER-edition%20Final.pdf>, at 16-17 (Oct. 2007).

¹³ As the OECD notes: “ITC [Information and Communications Technology] has had, and will continue to have, significant economic implications. Businesses are transforming their supply and demand chains, as well as their internal organization to fully exploit ICT. Governments are restructuring their internal functions and the way they deliver services and generally interact with citizens and businesses. People are modifying their consumption and spending patterns, as well as their behavior. In the process, nearly every economic variable of interest is affected.” *OECD Guide to Measuring the Information Society*, <http://www.oecd.org/dataoecd/41/12/36177203.pdf>, at 11 (2005).

¹⁴ See The World Bank, *Information and Communications for Development 2006*, <http://www.ictliteracy.info/rf.pdf/ICT%20for%20Development.pdf>, at 7 (2006).

¹⁵ For a list of countries that presently apply some form of cap or limit on FDI in the telecommunications and audiovisual sector, see *OECD Telecom Outlook 2009*, www.oecd.org/sti/telecom/outlook, at 43-49 (2009).

II. MANAGING THE COMPLEX ISSUES CREATED BY CONTENT RESTRICTIONS WILL BENEFIT INTERNET USERS EVERYWHERE.

Various countries impose, for a wide variety of reasons, filtering or blocking requirements that apply to Internet content.¹⁶ Such policies raise important political, economic and technical issues that, unless appropriately cabined, threaten to fragment or slow the expansion of the Internet, to the detriment of users in all countries. Because of the global nature of the Internet, a country's content restrictions can have extraterritorial effects by limiting lawful content available to users outside the country.

The manner in which countries impose content restrictions can also have important ramifications on the flow of information. Some countries have erected firewalls to restrict the inflow of information; others impose mandatory blocking or filtering requirements. To the extent these rules impose obligations on international network operators, who can be easy targets for these requirements, content restrictions can degrade network functionality, increase costs to Internet providers, and cause "collateral damage" to the global Internet by inadvertently blocking legitimate content. The future growth and ubiquity of the global Internet depends on the development of approaches for addressing the issues created by divergent blocking policies.

The United States should continue to promote the application of internationally accepted freedom of expression principles to the Internet – a policy that the U.S. government has appropriately pursued via government-to-government cooperation, collaboration, and

¹⁶ *Notice* at 60072.

negotiation.¹⁷ Of course, even if freedom of expression issues can be successfully addressed in inter-governmental forums, the reality is that unique cultural sensitivities present in different countries will make harmonization of content restrictions difficult or unlikely. However, by managing the technical and economic issues associated with content restrictions, governments can reverse – or at least manage – the trend towards fragmentation of the Internet.

The economic and technical burdens caused by content restrictions are due to the variation (and ambiguity) across jurisdictions regarding what is expected of private sector actors. As the *Notice* points out, different governments have instituted different enforcement frameworks, ranging from affirmative obligations to monitor and filter content to voluntary regimes in which Internet providers may elect to participate in exchange for certain immunities.¹⁸ There is substantial variation with respect to the processes used for informing companies of take-down obligations, and for determining liability for perceived compliance failures. And those difficult issues are compounded by complex technical issues associated with how to block content without creating unintended consequences such as network slowness or interference with access to legitimate, non-restricted content. Left unresolved, these issues create increased burdens on new and emerging enterprises and global companies alike.

¹⁷ Verizon's commitment to protect human rights is expressed in its corporate policies and practices, which covers the topics of freedom of expression and privacy. Verizon's Statement of Human Rights, see <http://responsibility.verizon.com/home/approach/human-rights>, underscores its commitment to promoting the human rights values embedded in its Commitment & Values and Code of Conduct. That statement cross-references the principles of the United Nations Declaration on Human Rights, including freedom of expression. Verizon's Privacy Principles, see <http://www.verizon.com/privacy>, and Guiding Principles for Content on Verizon Networks, see www.verizon.com/contentpolicy, set forth its policies for protecting customer privacy.

¹⁸ See *Notice* at 60072 (Question 4). Some governments regulate Internet providers under the same laws that apply to traditional print media, holding them legally responsible for information posted on their web sites, even if posted by third parties. *Id.*

A. The U.S. Digital Millennium Copyright Act and Section 230 of the Communications Decency Act Are Appropriate Models for Balancing the Interests of Various Stakeholders.

In the copyright area, the U.S. Digital Millennium Copyright Act (DMCA) provides a workable model for removing restricted content while at the same time protecting Internet service providers (ISPs) from unwarranted liability and encouraging innovation and deployment of Internet services.¹⁹ The DMCA was enacted to implement the copyright treaties negotiated through the World Intellectual Property Organization (WIPO), which were carefully crafted to balance the rights and responsibilities of copyright owners, users, and online service providers. Section 512 (a) of the DMCA creates an important bright line limitation on liability, recognizing the role of service providers when they function as “mere conduits” and ensuring that such providers continue to promote the free flow of information.²⁰ The limitations on liability in the DMCA are not conditioned on a service provider monitoring its service or removing infringing materials when it acts as a “mere conduit.” Sections 512 (b), (c) and (d) of the DMCA provide for protections for other critical Internet functions such as caching, storage, hosting and information location tools, and contain obligations to take down materials hosted on the service provider’s system or network after receipt of a valid take down notice.

The DMCA also provides important limitations against overly broad injunctive relief. Before ordering an injunction against a service provider, a court must apply four factors, including considering the burden on the provider’s network, whether the injunction would be technically feasible and effective and not interfere with access to non-infringing materials, and

¹⁹ See Pub. L. No. 105-304 (1998) (codified at 17 U.S.C. 512).

²⁰ Importantly, although the EU’s Directive on Electronic Commerce (2000/31/ED, OJ L 178, 17.7.2000), <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32000L0031:EN:NOT>, differs in some respects from the DMCA, it also recognizes the principle of service providers acting as “mere conduits” and provides a bright line limitation on liability.

whether there are less burdensome and comparably effective means of preventing access to such materials. *See* DMCA § 512 (j)(2). These injunctive relief protections strike the right balance by helping content owners enforce their copyrights while simultaneously ensuring that overly broad remedies do not impair the free flow of information or cause other unintended consequences.

When the Senate Foreign Relations Committee ratified the WIPO Copyright Treaties and approved the DMCA, it appropriately urged the Executive branch to promote the DMCA as the model for other countries to adopt as they update their copyright laws.²¹ Other countries have also adopted DMCA-like models, including the EU’s Directive on Electronic Commerce and Australia’s copyright law. It is critical that U.S. government and other signatories of the WIPO treaties continue to promote the service provider protections embodied in the DMCA as part of any copyright provisions in multilateral or bilateral trade agreements.

Also, Section 230 of the Communications Decency Act of 1996 represents a potential model for countries seeking to encourage responsible voluntary content monitoring without imposing undue liability risks. As the *Notice* observes, Section 230 has been extremely successful in spurring rapid growth in new Internet services because companies can offer websites, social network, and other services “without worrying about potential liability for information stored on or moving across their networks.”²² The Section 230 principle of facilitating voluntarily efforts to protect customers is one that should be promoted internationally.

²¹ S. Rep. No. 105-25, 105th Cong., 2d Sess. 17 (1998).

²² *Notice* at 60072.

B. National Policies Should Account for the Fact that Blocking Has Technical Limitations and Can Create Unintended Problems.

Technical issues associated with requirements for monitoring, filtering and blocking restricted content must be addressed with care to protect the free flow of information and to avoid unintended consequences for copyright owners, users and service providers, and the security and stability of the Internet. While a service provider can remove allegedly infringing copyrighted material residing on its systems or network under the DMCA notice and take down process discussed above, this same process does not easily translate into other areas of law, and creates technical and legal problems in situations where the provider serves as a mere conduit.

Domestic experience illustrates the sorts of technical challenges that blocking requirements can create, as well as the unintended consequences of such restrictions. In *Center for Democracy & Technology et al v. Pappert*, 337 F. Supp. 2d 606 (E.D. Pa. 2004), a federal district court invalidated a Pennsylvania anti-child pornography statute that assigned criminal liability to ISPs for failure to block restricted content. The court found no evidence that the state's enforcement of the statute against the ISPs had reduced child exploitation or abuse. *Id.* at 655. Instead, it found that “[m]ore than 1,190,000 innocent web sites were blocked in an effort to block less than 400 child pornography web sites, and there is no evidence that the government made an effort to avoid this impact on protected expression.” *Id.* The decision also noted that some blocking techniques can create substantial costs to ISPs and/or significantly degrade network functionality. *See, e.g., id.* at 629 & 652.

Notably, the district court found that some ISPs, because of the nature of their networks, were only able to implement Pennsylvania's blocking requirements on a nationwide basis. *Id.* at 645. The extraterritorial effect of the Pennsylvania statute formed the basis for invalidating

the statute under the Commerce Clause of the federal Constitution. *Id.* at 662 (“the burden imposed by the Act is clearly excessive in relation to the local benefits” and constitutes an “invalid indirect regulation of interstate commerce”). The same principle applies internationally: a single country’s blocking requirements can negatively affect innocent users in other countries, either by blocking legitimate content or by degrading network functionality.

Accordingly, it is important to promote domestic and international policies that – like the DMCA – acknowledge the importance of employing enforcement techniques that are technically feasible and tailored to realistic objectives, and that do not create undue costs or technical constraints for users outside the countries. It is especially important to ensure that blocking policies take into consideration those factors to the extent private sector actors face potential liabilities for compliance failures.

III. EXCESSIVE REGULATION CAN HAVE ADVERSE CONSEQUENCES.

A. Promoting Industry Self-Governance Is Important Given the Complex and Fast-Changing Nature of the Internet.

The most effective approach to maximizing consumer welfare – both in the U.S. and globally – is to ensure that the Internet ecosystem evolves in ways that best meet consumers’ needs. And the best way to facilitate that goal is by promoting informed consumer choice. If all providers throughout the Internet ecosystem are encouraged to disclose the key terms and characteristics of their services, consumers themselves, rather than government fiat, can determine what services they want to receive and drive the continuing development of the Internet. The U.S. government has a long history promoting industry self-governance in order to unleash innovation and growth in the Internet – a successful policy that the U.S. should continue to promote internationally.

As Internet technology for the mass market first started to emerge in the 1990s, policymakers in the Clinton administration recognized the importance of private sector leadership in the development and administration of the Internet. President Clinton stressed this principle when signing the “Framework for Global Economic Commerce”:

Though government played a role in financing the initial development of the Internet, its expansion has been driven primarily by the private sector. For electronic commerce to flourish, the private sector must continue to lead. Innovation, expanded services, broader participation, and lower prices will arise in a market-driven arena, not in an environment that operates as a regulated industry.

Accordingly, governments should encourage industry self-regulation wherever appropriate and support the efforts of private sector organizations to develop mechanisms to facilitate the successful operation of the Internet. Even where collective agreements or standards are necessary, private entities should, where possible, take the lead in organizing them.²³

That policy has worked well. The Internet has been successfully governed largely through the efforts of the Internet community in the form of technical standards bodies (*e.g.*, the Internet Engineering Task Force) and other self-regulatory measures such as the development of industry best practices and public-private sector dialogues around specific issues areas. As Verizon and Google jointly explained in the net neutrality proceeding before the FCC, “[t]he success of the public Internet has been the direct result of the existing system of self-governance, with collaboration and engagement by parties throughout all parts of the Internet ecosystem and minimal governmental involvement.”²⁴

As a recent example, earlier this year, a broad cross-section of the industry (on all sides of ongoing Internet policy debates), including Verizon, Google, Cisco, Microsoft, Level 3,

²³ White House Office of the Press Secretary, “Memorandum for the Heads of Executive Departments and Agencies,” <http://govinfo.library.unt.edu/npr/library/direct/memos/eleccom.html> (July 1, 1997).

²⁴ Google and Verizon Joint Submission on the Open Internet, *Preserving the Open Internet; Broadband Industry Practices*, GN Docket No. 09-191, WC Docket No. 07-52, at 4 (FCC Jan. 14, 2010).

Intel, AT&T, and Comcast, announced the formation of the Broadband Internet Technical Advisory Group (BITAG) “to bring together engineers and other similar technical experts to develop consensus on broadband network management practices or other related technical issues that can affect users’ Internet experience, including the impact to and from applications, content and devices that utilize the Internet.”²⁵ Such technical and industry groups can address problems that arise, develop industry best practices, and provide forums to help resolve disputes, much as the Better Business Bureau oversees an alternative dispute resolution mechanism for resolving disputes among competitors concerning their advertising. Verizon has been a leader in the BITAG and the other forums discussed above.²⁶

Another important forum with a role in industry self-governance is the Internet Governance Forum (IGF). An output of the World Summit on Information Society (WSIS) in 2005, the IGF plays an important role in facilitating multi-stakeholder (government, business, civil society, technical) engagement on existing and emerging Internet policy issues in a non-decision making forum. This mechanism enables dialogue on issues affecting the global Internet, the sharing of best practices, and transparency on the evolution of approaches. The

²⁵ PR Newswire, Press Release, *Initial Plans for Broadband Internet Technical Advisory Group Announced*, <http://www.prnewswire.com/news-releases/initial-plans-for-broadband-internet-technical-advisory-group-announced-95950709.html> (June 9, 2010).

²⁶ Several ISPs have joined with other stakeholders to form the Global Network Initiative (GNI), whose mission is to develop collaborative approaches to protecting and advancing freedom of expression and privacy. *See Notice* at 60073. While Verizon applauds the objectives of the participants in the GNI, their businesses and experiences in other nations are markedly different than Verizon’s. Verizon was not among the companies participating in GNI because its provisions do not reflect Verizon’s circumstances as a global network service provider with assets, employees, and local facilities and operations subject to the local licensing and other laws in many parts of the world. Different forums, of course, make sense for different industry participants. As discussed above, Verizon has expressed its commitment to protecting human rights in its corporate policies and practices, which cover the topics of freedom of expression and privacy that the GNI principles also address.

global IGF is complimented by the emergence of national and regional IGFs, building on the multi-stakeholder dialogue at the local and regional levels.

Verizon has also implemented programs on its own that empower and protect its customers and improve coordination among stakeholders. For example, Verizon has implemented a program under which it forwards notices from copyright holders to customers regarding alleged copyright violations. The program strikes an appropriate balance between the legitimate interests of rights holders in protecting their copyrights and the important privacy and other interests of its Internet access customers. Since the launch of Verizon's notice forwarding program in late 2008, all major U.S. ISPs have followed suit to introduce their own versions of this program. Collectively, these notice forwarding programs have proven very effective in not only notifying customers about allegations of infringing behavior involving their Internet connection, but also, importantly, at educating customers about the security risks associated with file sharing and the importance of stopping any potentially infringing behavior, all with minimal adverse customer reaction.

Such voluntary, industry-led approaches to addressing challenging online issues should be encouraged. Indeed, given the dynamic, fast-changing nature of the Internet, regulators may not be able to act quickly enough to effectively deal with emerging issues, and/or may inadvertently impose solutions that have unintended negative consequences such as stifling investment and innovation. Accordingly, continued reliance on industry self-governance should be the predominant model going forward, both domestically and internationally.

B. Domestic Policies that Regulate the Internet Would Have Significant Negative International Ramifications.

Hand-in-hand with its policy of promoting private sector self-governance, the U.S. government has historically declined to apply outdated legacy regulatory paradigms to the

Internet. As the Internet and IP-based services approach a crucial crossroads, it is vital that the United States not change course domestically. The U.S. government's limited regulatory approach has set an example for the rest of the world that, while obviously not always followed, has served as a benchmark and provided a basis for the U.S. to urge other nations to forego policies that would damage the global interconnectedness of the Internet or otherwise weigh down its development through unnecessary and costly regulation that inhibits investment and innovation.

Consistent with the approach President Clinton described for the Framework for Global Economic Commerce, FCC Chairman Kennard recognized (over a decade ago) that outdated regulatory frameworks would hurt consumers and stifle the innovation and investment needed to fuel the continuing evolution of the Internet:

I believe that two things are most responsible for the explosion of the Internet . . . First, this tradition of openness. Second, the fact that the Internet is unregulated.

Let me say this as clearly as I can: as long as I am chairman of the FCC, we will not regulate the Internet. . . . Unfortunately, there are those who, for whatever reasons, try to rile up Internet users saying that the FCC is going to take those old phone regulations and dump them on the Internet. . . . [A]nyone who knows anything about me knows that I am committed to creating a telecom marketplace that is free from unnecessary regulation and full of robust competition. . . .

Because if you know that companies are making decisions based on marketplace incentives, rather than regulatory edicts, then you can better predict what companies will do. And more predictability and more stability means: more investment, more innovation, more growth, more jobs, and more opportunity.²⁷

The FCC led by Chairman Kennard specifically pointed its own example of the absence of regulation of the Internet as a model for foreign regulators to follow:

²⁷ Chairman William E. Kennard, "A Stable Market, A Dynamic Internet," <http://www.fcc.gov/Speeches/Kennard/spwek910.html> (March 11, 1999).

The Internet has evolved at an unprecedented pace, in large part due to the absence of government regulation. Consistent with the tradition of promoting innovation in new communications services, regulatory agencies should refrain from taking actions that could stifle the growth of the Internet. During this time of rapid telecommunications liberalization and technology innovation, unnecessary regulation can inhibit the global development and expansion of Internet infrastructure and services. To ensure that the Internet is available to as many persons as possible, the FCC has adopted a “hands-off” Internet policy. We are in the early stages of global Internet development, and policymakers should avoid actions that may limit the tremendous potential of Internet delivery.²⁸

However, new regulation proposed by both federal and state regulators has raised the specter of substantial U.S. government intrusion into the Internet. For example, pending efforts by state public utility commissions to apply legacy telephone regulation to VoIP threaten to create a domestic patchwork of disparate regulatory requirements similar to what VoIP providers must contend with internationally.²⁹

An even greater threat is the FCC’s proceedings threatening to impose restrictive net neutrality rules on broadband Internet access services, or even to apply Title II regulation (the

²⁸ FCC, *Connecting the Globe: A Regulator’s Guide to Building a Global Information Community*, <http://www.fcc.gov/connectglobe/sec9.html>, at Section IX (1999).

²⁹ Although the FCC has preempted state regulation of VoIP, some states have taken the position that their jurisdiction to regulate traditional copper telephone service extends to “fixed” VoIP services. For example, in October 2010, Maine’s Public Utility Commission issued an order stating that the VoIP services of cable providers are “telephone services” under state law and are not preempted by federal law. Order, *Investigation into Whether Providers of Time Warner “Digital Phone” Service and Comcast “Digital Voice” Service Must Obtain Certificate of Public Convenience and Necessity to Offer Telephone Service*, Docket No. 2008-421 (Me. Pub. Util. Comm’n issued Oct. 27, 2010). A day later, the Vermont Public Service Board, likewise, ruled that VoIP services offered in Vermont are subject to regulation as “telecommunications services” under state law. Order Re Phase I, *Investigation into Regulation of Voice Over Internet Protocol (“VoIP”) Services*, Docket No. 7316 (Vt. Pub. Serv. Bd. issued Oct. 28, 2010). Also in October 2010, the Wisconsin Public Service Commission opened an investigation to determine the “appropriate level of regulation” for fixed, interconnected VoIP services, after finding that AT&T’s U-verse VoIP service is a “telecommunications service” under state law and that the FCC has not preempted state regulatory jurisdiction. Notice of Proceeding and Prehearing Conference, *Investigation of VoIP over Internet Protocol (VoIP) in Wisconsin*, Docket No. 5-TI-2071 (Wisc. Pub. Serv. Comm’n issued Oct. 15, 2010); Final Decision, *Petition of AT&T Wisconsin for Declaratory Ruling that Its “U-verse Voice” Service Is Subject to Exclusive Federal Jurisdiction*, Docket 6720-DR-101 (Sept. 24, 2010).

legacy “common carrier” regulation developed to regulate former monopoly providers in the copper telephone industry) to the Internet.³⁰ The current and immediate past Coordinators for International Communications and Information Policy at the Department of State have expressed concern that adopting “net neutrality” rules would set a harmful example for other countries. As one recently explained: “[T]he Network Neutrality proceeding has attracted extensive attention around the world. I think it is fair to say that the level of international interest is very nearly universal. In some countries it is being interpreted as an initiative by the United States to regulate the Internet. And we are concerned that in some countries it may be used as a justification for blocking access for purposes of preventing unwelcome political, social, or cultural information from being disseminated to their citizens.”³¹ Notably, the European Commission has recently decided not to adopt “net neutrality” laws – a sound decision in line with the philosophy that “we have to avoid regulation which might deter investment and an efficient use of the available resources.”³²

³⁰ See Notice of Proposed Rulemaking, *Preserving the Open Internet Broadband Industry Practices*, 24 FCC Rcd 13064 (2009); Notice of Inquiry, *Framework for Broadband Internet Service*, 25 FCC Rcd 7866 (2010).

³¹ “International Innovation and Broadband,” Remarks of Ambassador Philip L. Verveer, U.S. Coordinator for International Communications and Information Policy, at House of Sweden, Washington, D.C., <http://www.state.gov/e/eeb/rls/rm/2009/133802.htm> (Dec. 3, 2009); see also Ambassador David Gross, *A Note on Next Week’s Vote at the FCC*, post to Interesting-People.org, <http://www.interesting-people.org/archives/interesting-people/200910/msg00114.html> (Oct. 15, 2009) (“[T]here may be virtually no basis for the United States to object to other governments also creating new rules governing the Internet. . . . It is easy to understand that these other governments will seek to design rules to help their domestic companies at the expense of international and American companies as well as at the cost of the economically efficient design of the Internet. Ironically they are also likely to use the establishment of new US rules regulating the Internet to impose their own restrictions on Internet content – especially focusing on restricting the free flow of information so as to promote their own interests in enhancing Chinese ‘social cohesion’ or other countries that seek to ‘defend against religious defamation.’”). In the wake of the FCC’s “third way” proposal, a majority of the U.S. House of Representatives and a third of the Senate signed letters recommending that the FCC abandon the proposal. See, e.g., Marguerite Reardon, “Lawmakers Oppose FCC Push to Assert Net Authority,” CNET, news.cnet.com/8301-30686_3-20006332-266.html (May 28, 2010).

³² See Neelie Kroes, European Commission Vice-President for the Digital Agenda, “Net neutrality – the way forward European Commission and European Parliament Summit on ‘The Open Internet and Net Neutrality in Europe,’” Brussels, Speech/10/643 (Nov. 11, 2010).

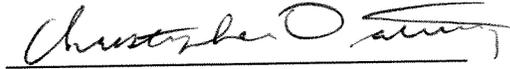
FCC Commissioner McDowell has expressed the same concern about setting the right example: “[S]ome foreign regulators are waiting for the U.S. to assert more government authority over the Internet to justify an increased state role over the Internet’s affairs in their countries,” some of which “may have a definition of the ‘public interest’ that is far different from ours.”³³ Resisting domestic proposals to apply burdensome legacy telephone regulatory paradigms or other intrusive regulation to the Internet or other IP services is crucial for protecting both U.S. consumers and U.S. credibility.

CONCLUSION

Pervasive, speedy, intelligent and affordable Internet services provided through robust high-capacity networks are vital to economic recovery and future growth, and for future deployment of such in-demand services as telemedicine, high-definition video, and telepresence applications. Appropriate harmonized international policies create an atmosphere conducive to investment by the private sector, which is important for the development of communications markets, particularly for broadband. Market liberalization, stable and predictable regulatory frameworks, and free FDI flows should be the driving principles behind U.S. international efforts. The U.S. should continue its engagement in international discussions to ensure a global Internet open to innovation and new services and the free flow of information. And the U.S. should lead by example by continuing the hands-off regulatory philosophy that has been bedrock U.S. policy towards the Internet since its inception.

³³ Commissioner Robert McDowell, “Questions to Ask Regarding Internet Regulation,” Institute for Policy Innovation Communications Summit (November 12, 2009).

Respectfully submitted,



Of Counsel:
Michael E. Glover

Edward Shakin
William H. Johnson
Christopher D. Oatway
VERIZON
1320 North Court House Road, 9th Floor
Arlington, Virginia 22201
(703) 351-3060

John T. Scott, III
William D. Wallace
VERIZON WIRELESS
1300 I Street N.W., Suite 400 West
Washington, DC 20005

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